

OGC HAS REVIEWED.

81 OCT 1976

DD/A Registry
File Personnel-17

STATINTL



STATINTL

Dear Mr. [REDACTED]

STATINTL

This letter is a "follow on" to the telephone conversation you had recently with [REDACTED] concerning your lump-sum leave payment. The matter has been researched by our Office of General Counsel, and I shall relate to you the substance of their position.

The results of their review do not support your contention that you might have a case against the Government for the early payment of your accrued leave. Their finding is based on the law which requires that a retiree from a Government service be given a lump-sum payment for unused leave remaining at the time of retirement. There is nothing addressing the time of the payment in four to six weeks; an employing department or agency is only required to make the payment as soon as possible in accordance with its normal business procedures. Your complaint is based upon the statement made by a member of the Retirement Affairs Division to the effect that the normal time to receive payment for unused leave would be four to six weeks after retirement. We have found that this statement, based on experience extending over many years in the retirement processing business, is substantially still correct.

There appears to be no reason why the Office of Finance effected your payment in less time, except that their workload permitted them to do so in less than the time normally experienced. It appears the payment was handled in a normal business manner used in making similar payments. Thus, says the Office of General Counsel, "... there is neither clear administrative error nor any Government liability for the payment as made."

- 2 -

I certainly understand your concern since you took what one would consider the necessary precautions to ensure that the payment would be made after the first of the year. On the other hand, I cannot see what a possible law suit could bring about since one cannot seek repayment of the additional tax which is legally owed by an individual.

I realize full well that this response is not what you had hoped to receive. Under the circumstances, however, there is no other reply I can give you.

Sincerely,

SIGNED

STATINTL


Chief
Retirement Affairs Division

DD/A Registry
File *Personnel-17*

DDA 76-5160

18 October 1976

STATINTL MEMORANDUM FOR: [REDACTED]
Retirement Affairs Division
STATINTL FROM : [REDACTED]
Executive Officer, DDA
STATINTL SUBJECT : Letter to Mr. [REDACTED]

Ron:

It occurs to me that the attached letter might better come from the Retirement Affairs Division, rather than from us. Would you please give me a call so that I can drop Mr. [REDACTED] a personal note telling him an official response is on its way.

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Attachment

STATINTL EO/DDA/[REDACTED]:1m (18 Oct 76)

Distribution:

Orig - Addressee w/att
1 - DDA Subject w/att
1 - DDA Chrono
1 - RFZ Chrono

STATINTL Attachment: Draft letter to Mr. [REDACTED] re lump sum retirement payment.

STATINTL



Dear Roy:

Let me first apologize for the time it has taken to get a final response to you concerning your lump leave payment. The matter has been researched by our Office of General Counsel, and I shall relate to you the substance of their position.

The results of their review do not support your contention that you might have a case against the Government for the early payment of your accrued leave. Their finding is based on the law which requires that a retiree from a Government service be given a lump sum payment for unused leave remaining at the time of retirement. There is nothing, of course, addressing the time of the payment in four to six weeks and, as I said above, it is only required to make the payment (and as soon as possible). Your complaint is based upon the statement made by a member of the Retirement Branch to the effect that the normal time to receive payment for unused leave would be four to six weeks after retirement. We have found that this statement, based on experience extending over many years in the retirement processing business, is substantially still correct.

There appears to be no reason why the Office of Finance effected your payment in less time, except that their work

load permitted more expeditious handling, unfortunately, as it appears the payment was handled in a normal business manner used in making similar payments. Thus, says the Office of General Counsel, ". . .there is neither clear administrative error nor any Government liability for the payment as made."

I certainly understand your concern since you took what one would consider the necessary precautions to ensure that the payment would be made after the first of the year. On the other hand, I can't see what a possible law suit could bring about since one cannot seek repayment of the additional tax which is legally owed by an individual.

If there is anything else you would like me to do, please don't hesitate to write.

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OGC 76-5097

20 September 1976

STATINTL MEMORANDUM FOR: [REDACTED] Executive Officer, DDA
STATINTL FROM: [REDACTED]
Office of General Counsel
STATINTL SUBJECT: [REDACTED] Annuitant

STATINTL 1. You asked the opinion of this Office whether Mr. [REDACTED] has
STATINTL a viable claim against the Government based on the following set of facts:
Mr. [REDACTED] retired from the Agency as a GS-15 on 5 December 1975 with
25 or more years of service. During his exit processing he stated that he
did not want his lump-sum leave payment made during the balance of the
1975 calendar year. The officer conducting the briefing stated that the
STATINTL normal time in which employees receive their lump-sum payment for unused
leave is four to six weeks after their retirement. Mr. [REDACTED] lump-sum
leave payment, however, was made on 17 December 1975, approximately 11 days
STATINTL after his retirement. Due to this early payment, Mr. [REDACTED] claims to
STATINTL have incurred expenses of approximately \$3,000 in additional Federal taxes.
Subsequently, Mr. [REDACTED] in discussions with a lawyer, was lead to
STATINTL believe that he might have a case against the Government for having been
given this "false information." There is some indication that Mr. [REDACTED]
would have willingly retired at a later date if he were not assured that his
lump-sum leave payment would be paid in calendar year 1976.

STATINTL 2. The law, 5 U.S.C. 5551, requires that a retiree from Government service
be given a lump-sum payment for unused leave remaining at the time of retire-
ment. This was done. Mr. [REDACTED] complaint is based not on the Govern-
ment's failure to pay, but rather on the speed with which the payment was made.
Receiving this payment earlier than expected, he claims to have incurred a
\$3,000 expense in additional taxes which, by delaying the payment until the
following calendar year, he was attempting to minimize.

STATINTL 3. This complaint, then, is based upon his reliance on a statement made
STATINTL by a member of the Retirement Branch, Office of Personnel, to the effect that
the normal time to receive lump-sum payment for unused leave would be four
to six weeks after retirement. This statement was based on experience extending
over many years in the retirement processing business and is considered to be
a correct statement by all concerned. The fact that Ms. [REDACTED] made this state-
ment did not bind the Government to any contract with Mr. [REDACTED] nor did it

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provide any legally sound commitment for him to place his reliance upon. This was merely her observation made over the years of the normal time required for a lump-sum payment to be made. The actual time required in any individual case, however, will depend on the workload in Finance, an office separate and independent of the Retirement Branch.

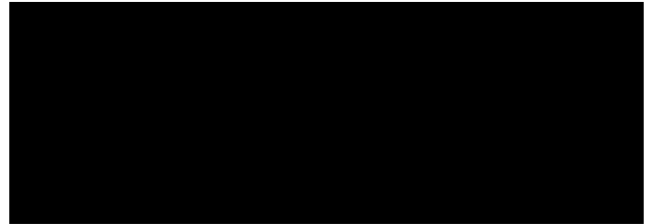
STATINTL

3. It appears, then, that if Mr. [REDACTED] lump-sum payment was processed in the normal business manner used in making similar payments, there is neither clear administrative error nor any Government liability for the payment as made. In the absence of either administrative error or Government liability, this Office feels that Mr. [REDACTED] does not have a viable civil action which he could pursue for a legal remedy. The still-unaddressed question is what legal remedy Mr. [REDACTED] could seek. He cannot seek repayment of the additional tax as this was legally owed by him.

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UNCLASSIFIED CONFIDENTIAL SECRET

OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	[REDACTED] EO/DDA		
2	7D26 HQS		
3			
4			
5			
6			

<input type="checkbox"/> ACTION	<input type="checkbox"/> DIRECT REPLY	<input type="checkbox"/> PREPARE REPLY
<input type="checkbox"/> APPROVAL	<input type="checkbox"/> DISPATCH	<input type="checkbox"/> RECOMMENDATION
<input type="checkbox"/> COMMENT	<input type="checkbox"/> FILE	<input type="checkbox"/> RETURN
<input type="checkbox"/> CONCURRENCE	<input type="checkbox"/> INFORMATION	<input type="checkbox"/> SIGNATURE

Remarks:

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.

DATE

OGC 7D07 HQS x7231

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SECRET

STATINTL

04C 76-4308
9-4-76

DDA 76-3918

4 August 1976

MEMORANDUM FOR: Office of General Counsel

FROM :

[REDACTED]
Executive Officer, DDA

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SUBJECT :

Mr. [REDACTED] Annuitant

STATINTL

1. Mr. [REDACTED] visited Mr. Malanick earlier this week with the following problem. He retired from the Agency as a GS-15 on 5 December 1975, with 25 or more years of service. During his exit processing, he claims to have made clear that he did not want his lump sum leave payment to be made during the balance of the 1975 calendar year. In his retirement briefing notebook, the statement was made by a member of the Retirement Branch, Office of Personnel, that his lump sum leave payment would not be paid in less than four to five weeks. According to Mr. [REDACTED], a call was made by the Personnel processor to Payroll Division, Office of Finance, to confirm that the payment would not be made prior to the end of the calendar year.

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2. Much to Mr. [REDACTED] dismay, his lump sum leave payment was made 17 December 1975. Mr. [REDACTED] states that he discussed the problem with the IRS and he was led to believe that there could be nothing done to alter the payment. Subsequently, Mr. [REDACTED] in discussion with a lawyer, was led to believe that he might have a case against the Government for having been given this false information. Thus, Mr. [REDACTED] visited the Retirement Branch and Mr. Malanick on Monday, 2 August. There is at least some indication that Mr. [REDACTED] would have willingly retired at a later date if he had not been assured that his lump sum leave payment would be paid in calendar year 1976.

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3. Based on the above, could you render an opinion as to whether or not there is some Government liability to this clear administrative error which, according to Mr. [REDACTED] cost him some \$3,000. Do you feel that Mr. [REDACTED] has a case against the Government.

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4. Because we assured Mr. [REDACTED] an early response, would you please give me an answer by COB Friday, 6 August.

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DDA 76-3918

4 August 1976

MEMORANDUM FOR: Office of General Counsel

FROM : [REDACTED]
Executive Officer, DDA

STATINTL

SUBJECT : Mr. [REDACTED] Annuitant

STATINTL

STATINTL

1. Mr. [REDACTED] visited Mr. Malanick earlier this week with the following problem. He retired from the Agency as a GS-15 on 5 December 1975, with 25 or more years of service. During his exit processing, he claims to have made clear that he did not want his lump sum leave payment to be made during the balance of the 1975 calendar year. In his retirement briefing notebook, the statement was made by a member of the Retirement Branch, Office of Personnel, that his lump sum leave payment would not be paid in less than four to five weeks. According to Mr. [REDACTED] a call was made by the Personnel processor to Payroll Division, Office of Finance, to confirm that the payment would not be made prior to the end of the calendar year.

STATINTL

STATINTL

2. Much to Mr. [REDACTED] dismay, his lump sum leave payment was made 17 December 1975. Mr. [REDACTED] states that he discussed the problem with the IRS and he was led to believe that there could be nothing done to alter the payment. Subsequently, Mr. [REDACTED] in discussion with a lawyer, was led to believe that he might have a case against the Government for having been given this false information. Thus, Mr. [REDACTED] visited the Retirement Branch and Mr. Malanick on Monday, 2 August. There is at least some indication that Mr. [REDACTED] would have willingly retired at a later date if he had not been assured that his lump sum leave payment would be paid in calendar year 1976.

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3. Based on the above, could you render an opinion as to whether or not there is some Government liability to this clear administrative error which, according to Mr. [REDACTED] cost him some \$3,000. Do you feel that Mr. [REDACTED] has a case against the Government.

STATINTL

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4. Because we assured Mr. [REDACTED] an early response, would you please give me an answer by COB Friday, 6 August.

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3 August 1976

TO: DD/Pers/SP

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[REDACTED]
GS-15, OTS
Retired 5 December 1975.
Initially planned to retire 19 December but changed
mind and opted for 5 December.

First visit to RAD, saw [REDACTED] but did not
like Frank. Told this back in OTS, and [REDACTED]
phoned Adele to tell her. On next visit, [REDACTED] was
seen by [REDACTED]. In her briefing, Marge told him
that normal time to receive lump sum payment for unused
leave would be 4-6 weeks after retirement. Almost every
person who is retiring wants some idea how long they will
have to wait for leave payment so that they can plan their
finances during the transition period. This is important
to them and they demand to know. Anyway, in [REDACTED]
case Marge not only told him but she also wrote it in
his "blue book" as a reminder. That must be what he
says he has "in writing".

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Marge's advice was based on experience extending over
many years in the retirement processing business.

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But something completely out of the ordinary occurred
in the Finance handling of [REDACTED] retirement because
he received his payment only eleven (11) days later by
a check dated 16 December!

Payments by Finance for the back two weeks pay and the
payment for unused leave are geared to the payroll operation
and are made on scheduled paydays. RAD has no idea why
Finance moved off this schedule to pay Treadway only 11
days after he retired. Paydays in December 1975 were on
5 and 19 December, and the next was on 2 January 1976.
RAD has handled thousands of retirements and has not
experienced a similar situation; [REDACTED] case was unusual.

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In any event, retirement officers in ROB have been instructed
not to be specific about the payment for leave. We know
that retirees want some idea of when they can expect payment,
so our people will tell them that payment is usually made
4 - 6 weeks after retirement date but that since Finance
will process payments in normal business manner payment
could be made earlier, depending on workload in Finance

and that we are making no promises. This seems to strike a balance between the desire of retirees to have some idea of payment and the need to avoid what could be construed as assurance of a certain date.

RAD first became aware of [REDACTED] problem when he called [REDACTED] on 2 August 1976. See copy of her memo of the call, attached here.

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One other point: [REDACTED] was a client of EEAB before he retired but broke contact upon retirement.

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[REDACTED]

Chief
Retirement Affairs Division

Attachment

STATINTL 2 August 1976: Mr. [REDACTED] who retired 5 December 1975, called from the Headquarters Building to complain about his lump-sum leave payment having been made in the 1975 tax year rather than in 1976 as he had been assured by ROB. I told him that I felt confident that everyone in this office knew better than to give such assurances and perhaps there was a misunderstanding. Mr. [REDACTED] claims that his retirement booklet also notes that LSL payment would be made 4 to 6 weeks after retirement - placing the payment in 1976. This cost him several thousand dollars in increased taxes. He intends to bring this matter to the IG's attention. However, he asked for Mr. Blake's extension which I gave to him.

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SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM			
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OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	DATE	INITIALS
1	Mr. [REDACTED]		
2			
3			
4			
5			
6			
ACTION		DIRECT REPLY	PREPARE REPLY
APPROVAL		DISPATCH	RECOMMENDATION
COMMENT		FILE	RETURN
CONCURRENCE		INFORMATION	SIGNATURE
Remarks: Bah. Attached per your request Ra Aug 76			
FOLD HERE TO RETURN TO SENDER			
FROM: NAME, ADDRESS AND PHONE NO.			DATE
Approved for Release 2001/08/27 : CIA-RDP79-00498A000500160006-3			UNCLASSIFIED CONFIDENTIAL SECRET